

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

KURT F. WILKENING,

Plaintiff,

v.

**VEOLIA ES EVERGREEN LANDFILL,
INC., a Georgia corporation; and VEOLIA
ES PECAN ROW LANDFILL, LLC, a
Georgia limited liability corporation,**

Defendants.

Civil Action 7:10-CV-122 (HL)

ORDER

Due to the tangled and confused nature of the docket in this case, the Court held a status conference on July 26, 2011. After considering the positions of the parties, the Court rules as follows.

Defendants have filed a Motion for Modification to Scheduling and Discovery Report and Order (Doc. 45). Dispositive motions were due in this case on July 9, 2011, which was a Saturday. Defendants did not file a dispositive motion on or before the 9th, or even on the 11th, which was the following Monday. In its Motion, which was filed on July 13, Defendants requested they be allowed to file an out-of-time dispositive motion. Upon review of Defendants' Motion, and after hearing counsel's explanation at the status conference, the Court finds that Defendants have not offered a satisfactory reason why they did not file a timely motion for summary judgment. Therefore, the Motion for Modification is denied.

During the status conference, Plaintiff offered to withdraw his Motion for Leave of Court to File Second Restated and Amended Complaint (Doc. 41) if the Court would not allow Defendants to file a late dispositive motion, and if the Court would agree to consider Plaintiff's Motion for Summary Judgment (Doc. 42) as it currently stands. The Court accepts Plaintiff's offer. The Motion to Amend is denied as moot, and the Motion for Summary Judgment will be considered as is. Defendants' response to the Motion for Summary Judgment is due on August 1, 2011. Plaintiff's reply will be due on August 18, 2011.

Also pending is Plaintiff's Motion to Compel Production of Documents for *In Camera* Inspection (Doc. 26). In that Motion, Plaintiff contends that certain documents Defendants assert are privileged should be produced to Plaintiff because they fall under the crime-fraud exception to the attorney-client privilege. However, as the case currently stands there is no fraud claim, and no fraud claim will be added. Thus, the Motion to Compel is denied as moot.

The parties have each filed motions under Daubert and Rule 702 to exclude the others' experts. (Docs. 36 and 40). Under the Scheduling Order, Daubert motions were due on June 24, 2011. Plaintiff's Motion to Exclude and/or Strike the Expert Opinions and Testimony of William F. Hodges, P.E. (Doc. 36) was timely filed. Defendants filed their response on July 27, 2011. Plaintiff's reply will be due on August 12, 2011.

On the other hand, Defendants' Motion in Limine to Strike and Exclude the Expert Report and Opinion Testimony of Usha Rodrigues (Doc. 40) was not filed

until June 27, 2011, three days after the deadline for Daubert motions. The Court would ordinarily disallow Defendants' Daubert motion because it was untimely filed and no explanation whatsoever has been given as to why the motion was not properly filed. However, the Motion in Limine will be allowed because it appears to the Court after a superficial examination that there may be proper objections to allowing Professor Rodrigues to testify in this case. Thus, despite Defendants' tardy filing, the Court believes it necessary to conduct a full Daubert examination of Professor Rodrigues. Plaintiff's response to the Motion in Limine will be due on August 3, 2011. Defendants' reply will be due on August 19, 2011.

To sum up:

1. Plaintiff's Motion to Compel Production of Documents for *In Camera* Inspection (Doc. 26) is denied as moot;
2. Plaintiff's Motion for Leave of Court to File Second Restated and Amended Complaint (Doc. 41) is denied as moot;
3. Defendants' Motion for Modification to Scheduling and Discovery Report and Order (Doc. 45) is denied;
4. Defendants' response to Plaintiff's Motion for Summary Judgment is due on August 1, 2011, and Plaintiff's reply is due on August 18, 2011;
5. Plaintiff's reply to his Motion to Exclude and/or Strike the Expert Opinions and Testimony of William F. Hodges, P.E. (Doc. 36) is due on August 12, 2011; and

6. Plaintiff's response to Defendants' Motion in Limine to Strike and Exclude the Expert Report and Opinion Testimony of Usha Rodrigues (Doc. 40) is due on August 3, 2011, and Defendants' reply is due on August 19, 2011.

SO ORDERED, this the 28th day of July, 2011.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

mbh